



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 30, 2011

Ms. Angela M. DeLuca
Assistant City Attorney
City of Bryan
P.O. Box 1000
Bryan, Texas 77805-1000

OR2011-04371

Dear Ms. DeLuca:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 412864.

The Bryan Police Department (the "department") received a request for all information related to a specified accident.¹ You claim portions of the requested information are excepted from disclosure under sections 552.101, 552.1175, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.²

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses laws that make criminal history record information ("CHRI") confidential. CHRI generated by the National Crime Information Center or by the Texas Crime Information Center is confidential under federal and state law. Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 at 7

¹You inform us the requestor clarified his request. *See* Gov't Code § 552.222 (if request for information is unclear, governmental body may ask requestor to clarify request).

²We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

(1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* Section 411.083 of the Government Code deems confidential CHRI the Department of Public Safety ("DPS") maintains, except DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See* Gov't Code § 411.083. Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090-.127. Similarly, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F. However, CHRI does not include driving record information. *See id.* § 411.082(2)(B) (term CHRI does not include driving record information). In addition, section 411.083 does not apply to active warrant information or other information relating to one's current involvement with the criminal justice system. *See id.* § 411.081(b) (police department allowed to disclosure information pertaining to person's current involvement in the criminal justice system). Upon review, we find portions of the submitted information, which we have marked, consist of CHRI that is confidential under chapter 411. Accordingly, the department must withhold the information we marked under section 552.101 in conjunction with chapter 411 and federal law. However, you have failed to demonstrate any of the remaining information consists of CHRI for purposes of chapter 411 of the Government Code. Accordingly, the department may not withhold any of the remaining information on that basis.

Section 552.101 also encompasses article 62.051 of the Code of Criminal Procedure. Article 62.051 of the Code of Criminal Procedure requires a sex offender registrant to provide the following information for the DPS sex offender registration database: the person's full name; each alias; date of birth; sex; race; height; weight; eye color; hair color; social security number; driver's license number; shoe size; home address; a recent color photograph, or if possible, an electronic image of the person; a complete set of fingerprints; the type of offense the person was convicted of; the age of the victim; the date of conviction; the punishment received; an indication as to whether the person is discharged, paroled, or released on juvenile probation, community supervision, or mandatory supervision; an indication of each license, as defined by article 62.005(g), that is held or sought by the person; an indication as to whether the person is or will be employed, carrying on a vocation, or a student at a particular public or private institution of higher education in this state or another state, and the name and address of that institution; and any other information required by DPS. *See* Crim. Proc. Code art. 62.051(c). This information is public information with the exception of the person's social security number, driver's license number, telephone number, all information required by DPS outside of the enumerated categories of information, and any information that would identify the victim of the offense for which the person is subject to registration. *See id.* art. 62.005(b). Thus, the department must withhold or release the marked information that is subject to article 62.005 of the Code of Criminal Procedure in accordance with article 62.005(b).

Section 552.101 also encompasses section 58.007 of the Family Code, which provides for the confidentiality of juvenile law enforcement records related to delinquent conduct or conduct indicating a need for supervision that occurred on or after September 1, 1997. Section 58.007 provides in relevant part:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

- (1) if maintained on paper or microfilm, kept separate from adult files and records;
- (2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and
- (3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapters B, D, and E.

Fam. Code § 58.007(c). For purposes of section 58.007(c), "child" means a person who is ten years of age or older and under seventeen years of age at the time of the reported conduct. *See id.* § 51.02(2). You claim portions of the remaining information are confidential under section 58.007(c). Upon review, however, none of the remaining information involves a juvenile under seventeen years of age engaging in delinquent conduct or conduct indicating a need for supervision for purposes of section 58.007. Therefore, we conclude none of the remaining information is confidential under section 58.007, and none of the remaining information may be withheld on that basis.

Section 552.101 also encompasses the doctrine of common-law privacy, which protects information that (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The type of information considered intimate or embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. This office has found some kinds of medical information or information indicating disabilities or specific illnesses to be excepted from required public disclosure under common-law privacy. *See* Open Records Decision No. 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). This office has also found that personal financial information relating only to an individual ordinarily satisfies the first requirement of the test for common-law privacy. *See* Open Records Decision No. 545 (1990) (mortgage payments, assets, bills, and credit history). Upon review, we find that portions of the remaining information, which we have

marked, are highly intimate or embarrassing and not of legitimate public interest. Therefore, the department must withhold the information we have marked under section 552.101 in conjunction with common-law privacy. However, none of the remaining information is highly intimate or embarrassing or is of legitimate public interest. Accordingly, the department may not withhold any of the remaining information under section 552.101 on the basis of common-law privacy.

Section 552.1175 of the Government Code provides in part:

(b) Information that relates to the home address, home telephone number, or social security number of [a peace officer as defined by article 2.12 of the Code of Criminal Procedure], or that reveals whether the individual has family members is confidential and may not be disclosed to the public under this chapter if the individual to whom the information relates:

- (1) chooses to restrict public access to the information; and
- (2) notifies the governmental body of the individual's choice on a form provided by the governmental body, accompanied by evidence of the individual's status.

Gov't Code § 552.1175(b). We note section 552.1175 is also applicable to personal cellular telephone numbers, provided the cellular telephone service is not paid for by a governmental body. *See* Open Records Decision No. 506 (1988). To the extent the cellular telephone number we have marked relates to a peace officer, the department must withhold this information under section 552.1175 if the individual to whom it pertains elects to restrict access to the information in accordance with section 552.1175(b) and if the cellular telephone service is not paid for with government funds.

Section 552.130 of the Government Code excepts from disclosure information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by a Texas agency. Gov't Code § 552.130(a)(1), (2). We note this exception is not applicable to out-of-state motor vehicle record information. Upon review, we find the department must withhold the Texas motor vehicle record information we have marked under section 552.130 in the remaining information.

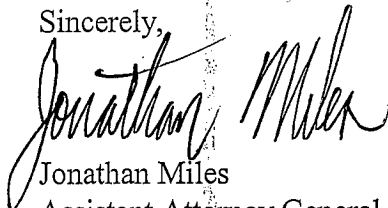
Section 552.136(b) of the Government Code provides "[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." *Id.* § 552.136(b); *see id.* § 552.136(a) (defining "access device"). This office has determined an insurance policy number is an access device for purposes of section 552.136. Accordingly, the department must withhold the insurance policy number we have marked under section 552.136 of the Government Code.

In summary, the department must withhold the information we marked under section 552.101 of the Government Code in conjunction with chapter 411 and federal law. The department must withhold or release the marked information that is subject to article 62.005 of the Code of Criminal Procedure in accordance with article 62.005(b). The department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The department must also withhold the information you have marked under section 552.1175 of the Government Code to the extent it relates to a peace officer who elects to restrict access to the cellular telephone number in accordance with section 552.1175(b) of the Government Code and the cellular telephone service is not paid for with government funds. The department must withhold the Texas motor vehicle record information we have marked under section 552.130 of the Government Code and the insurance policy number we have marked under section 552.136 of the Government Code.³ The remaining information must be released.⁴

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Jonathan Miles
Assistant Attorney General
Open Records Division

JM/em

³We note this office issued Open Records Decision No. 684 (2009), a previous determination authorizing all governmental bodies to withhold ten categories of information, including Texas driver's license and license plate numbers under section 552.130 and an insurance policy number under section 552.136 of the Government Code, without the necessity of requesting an attorney general decision.

⁴We note the remaining information contains social security numbers. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act.

Ref: ID# 412864

Enc. Submitted documents

c: Requestor
(w/o enclosures)